549.19 acres, the fractional west fourth of Section 32, Range 43, west of the Fifth Principle Meridian, Township 66, north of the Base Line. The same being accretion to tracts 2 and 3 of the fractional northeast fourth of Section 12, Range 43, west of the Fifth Principle Meridian, Township 66, north of the Base Line.

7. The property of Raymond Heide, Missouri accretion land, subject to Nebraska tax sale, and located in Section 11, Range 43, west of the Fifth Meridian, Township 66, north of the Base Line.

8. The property of Alice Winkler, consisting of [illegible] acres of Missouri accretion land subject of a Nebraska tax sale, said described as part of the southern half of the northeast fourth of Section 14 of the north part of the northwest fourth of Section 14, Range 43, west of the Fifth Principle Meridian, Township 66, north of the Base Line.

CONCLUSION.

An action cognizable in this court having been stated with sufficient particularity, the defendant should be required to answer.

Respectfully submitted,

NORMAN H. ANDERSON
Attorney General

HOWARD L. McFADDEN
Assistant Attorney General
Supreme Court Building
Jefferson City, Missouri
Attorneys for Plaintiff,
State of Missouri.

MAR 7 1968
JOHN F. DAVIS, CLE

In The

Supreme Court of the United States

October Term, 1968

No. 32 Original

STATE OF MISSOURI, PLAINTIFF,

V.

STATE OF NEBRASKA, DEFENDANT.

ANSWER

CLARENCE A. H. MEYER
Attorney General of Nebraska
State Capitol Building
Lincoln, Nebraska 68509
HOWARD H. MOLDENHAUER
Special Assistant Attorney General
of Nebraska
300 Continental Building
Omaha, Nebraska 68102
JOSEPH R. MOORE
Special Assistant Attorney General
of Nebraska
1028 City National Bank Building
Omaha, Nebraska 68102
Attorneys for Defendant

JOE CHRISTENSEN, INC., 1821 O Street, Lincoln, Nebraska

In The

Supreme Court of the United States

October Term, 1966

No. 32 Original

STATE OF MISSOURI, PLAINTIFF,

V.

STATE OF NEBRASKA, DEFENDANT.

ANSWER

The State of Nebraska for answer to the complaint and amendment thereto alleges:

FIRST DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The complaint seeks a determination by the Court of the location of the boundary between Missouri and Nebraska without alleging plaintiff's claim as to the location of such boundary, and therefore the complaint is insufficient to state a claim upon which relief can be granted.

THIRD DEFENSE

The complaint fails to state a controversy between the parties and seeks an opinion which is advisory in nature.

FOURTH DEFENSE

The complaint fails to state the nature of plaintiff's interest in the proceedings which gives it standing before the Court as a proper party plaintiff.

FIFTH DEFENSE

Defendant admits paragraphs 1 and 2 of the complaint.

I.

Paragraph 3 is denied. Nebraska was admitted to the Union by Act of Congress approved February 9, 1867 and by Proclamation of Admission dated the first day of March, 1867, with its eastern boundary adjacent to Missouri described as "the middle of the channel of said Missouri River, and following the meanderings thereof."

II.

Paragraph 4 of the complaint is denied for the reason that there are areas between Nebraska and Missouri where the boundary is no longer the Missouri River by reason of avulsions, leaving the boundary in the location of the old river bed.

III.

The first sentence of paragraph 5 of the complaint is denied for want of sufficient information to base an

answer. The second sentence of such paragraph is denied insofar as it alleges a divestiture. The third sentence of such paragraph is denied insofar as it alleges that claims for Nebraska taxes are unfounded or that the lands involved "have been in the undisturbed possession of Missourians from time immemorial." The last sentence of such paragraph is denied and defendant alleges in addition that no county or state official of Nebraska owes any explanation to plaintiff for the acts of his office.

IV.

Defendant is without information or belief upon which to base an answer to paragraph 6 of the complaint which is therefore denied. In addition, defendant states that such allegation is immaterial, and further that defendant claims ownership of no lands referred to in the amendment to complaint.

V.

Paragraph 7 of the complaint is denied insofar as it implies that efforts to establish a compact between the states had been exhausted prior to filing the complaint. Defendant's officials, particularly the Attorney General and State Surveyor believed at all times prior to the filing of the complaint that plaintiff intended to reciprocate the good faith efforts of defendant to resolve any areas of dispute existing between the two states.

VI.

As to the lands described in the amendment to complaint, defendant denies ownership in the persons named for the want of sufficient information upon which to base a belief.

VII.

As to areas referred to in plaintiff's amendment to complaint, defendant denies each and every allegation and alleges:

Tract 1: This land is not described by original government survey description. Apparently the description should be:

> "Fractional sections 16, 17, 20, 21, 22, 27, and 28, and accretions thereto, Township 1 North, Range 18 East of the Sixth P.M., Richardson County, Nebraska."

as shown on the original Government Survey. The description used in the amendment to complaint is apparently a "made" description effected by extending the original government survey lines of Missouri.

Plaintiff asserts no title or claim to the land described and defendant disclaims any legal or equitable ownership thereof.

The decree of the Nebraska Court quieting title as to the parties in the case is final. The matter is res judicata as to those parties and anyone claiming through them. To the extent this action is an attempt to avoid the decree in the *Durfee* v. *Duke* cases, this action should be dismissed as being for the benefit of private individuals and not for the benefit of the State of Missouri.

For additional answer as to this tract defendant alleges it to be in Nebraska.

Tract 2: This land is insufficiently described for defendant to respond to plaintiff's claim. The N½ of NE¼ of Section 3, Township 61 N, Range 40 W of the 5th P.M., is not contiguous to the balance of the described land.

Because of the insufficiency of description of the balance of this tract defendant is presently unable to locate these lands accurately.

The allegation that these lands accreted to the right bank of the Missouri River is admitted. No change thereafter is alleged which would transfer them to the plaintiff State as alleged and therefore defendant claims jurisdiction.

Tract 3: The Nebraska description to this tract is:

> Sections 23, 25, 26 and 36, and accretions thereto, Township 4 North, Range 16 East of the 6th P.M. and Section 31, and accretions thereto, Township 4 North, Range 17 East of the 6th P.M., Nemaha County, Nebraska.

This land was originally formed on the Nebraska side of the main channel and is in Nebraska.

Tracts 4 to 8: These tracts are in generally the same area and were originally part of land in Nebraska. Description from original Government Survey would place these lands in parts of:

> Sections 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, Township 7 North, Range 15 East of the 6th P.M., Otoe County, Nebraska.

No basis for plaintiff's claim is stated in the complaint. Defendant alleges these lands are within defendant's jurisdiction.

Defendant is unable to locate the tracts specifically because:

Tract 4 cannot be located from plaintiff's description.

Tract 5 recites 433.57 acres but describes approximately 80 acres.

Tract 6 cannot be located from plaintiff's description.

Tract 7 cannot be located from plaintiff's description.

Tract 8 cannot be located from plaintiff's description.

All claims to jurisdiction over the tracts described in the amendment to complaint require location of the present boundary lines between the states. Plaintiff has failed to describe the boundary in any location.

WHEREFORE, defendant prays that the complaint be dismissed or in the alternative that the court determine and decree that plaintiff has failed to establish its claim to the various parcels involved herein.

STATE OF NEBRASKA, Defendant

By: CLARENCE A. H. MEYER
Attorney General of Nebraska
State Capitol Building
Lincoln, Nebraska

HOWARD H. MOLDENHAUER
Special Assistant Attorney General of Nebraska
300 Continental Building
Omaha, Nebraska

JOSEPH R. MOORE
Special Assistant Attorney General of Nebraska
1028 City National Bank Building
Omaha, Nebraska
Attorneys for Defendant

PROOF OF SERVICE

I, Howard H. Moldenhauer, Special Assistant Attorney General of the State of Nebraska, and a member of the Bar of the Supreme Court of the United States, hereby certify that on March 7, 1968, I served a copy of the foregoing Answer by depositing the same in a United States Post Office, with first class postage prepaid, addressed to:

Honorable Warren E. Hearnes
Governor of the State of Missouri
State Capitol
Jefferson City, Missouri

Honorable Norman H. Anderson
Attorney General,
State of Missouri
Supreme Court Building
Jefferson City, Missouri

Brick P. Storts, III
Assistant Attorney General of Missouri
Supreme Court Building
Jefferson City, Missouri

Howard L. McFadden
Assistant Attorney General of Missouri
Supreme Court Building
Jefferson City, Missouri

such being their post office addresses.

Howard H. Moldenhauer

Special Assistant Attorney
General of Nebraska
300 Continental Building
Omaha, Nebraska 68102